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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

No. 77-6431

ABDIEL CABAN,

Appellant

-against-

KAZIM MOHAMMED and MARIA MOHAMMED,

Appellees.

ON APPEAL TO THE COURT OF APPEALS OF THE

STATE OF NEW YORK

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
 COUNTY OF KINGS)

Myrna D. Berger, being duly sworn, deposes and
 says:

Deponent is not a party to the action, is over
 the age of 18 years and resides in Kings County.

On April 15th, 1978, deponent served a copy of
 the foregoing Motion to Dismiss and to Affirm upon Robert H.
 Silk, Attorney for Appellant, at 401 Broadway, Suite 1701,
 New York, New York 10013, by depositing a true copy of
 same enclosed in a first class postage prepaid properly
 addressed wrapper, in a post office official depository
 under the exclusive care and custody of the United States
 Postal Service within the State of New York.

Myrna D. Berger
 Myrna D. Berger

Sworn to before me, this

15th day of April, 1978.

MORRIS SCHULSTAPER
 Notary Public in and for the State of New York
 No. 24858-20
 Qualified in Kings County
 Commission Expires March 30, 1980

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In The
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Appellees.

ON APPEAL TO THE COURT OF APPEALS OF THE
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MOTION TO DISMISS

The appellees, Kazim Mohammed and Maria Mohammed, residents of the Borough of Brooklyn, City and State of New York, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States move to dismiss the appeal from the judgment of the Court of Appeals of the State of New York upon the ground that it does not present a substantial federal question; and is not within the jurisdiction of the court; and that the federal question sought to be reviewed was expressly passed upon; and that the judgment rests upon an adequate non-federal basis.

MOTION TO AFFIRM JUDGMENT

The appellees, Kazim Mohammed and Maria Mohammed,

residents of the Borough of Brooklyn, City and State of New York, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States move the court to affirm the judgment of the Court of Appeals of the State of New York sought to be reviewed on the ground that the State of New York was not required to find anything more than that the adoption(s) was in the best interests of the child(ren) and that the appellant's interests were readily distinguishable from those of a divorced father; and that the State was not foreclosed from recognizing this difference in the extent of its commitment to the welfare of the child(ren); that the State could permissively give appellant less veto authority than it provides to a married father; that the appellant, who, assisted by counsel, was accorded a full, exhaustive hearing bearing on proofs relative to the best interests of the child(ren) was not, in this case, deprived of his asserted rights under the Due Process and Equal Protection Clauses.

Quilloin v. Walcott
98 S. Ct. 549

OPINIONS

The opinion of the Court of Appeals of the State of New York was reported in Matter of David A. C. 43 NY^{2nd} 708; 401 NYS^{2nd} 208(1977). The Court unanimously affirmed the opinion of the Supreme Court of the State of New York, Appellate Division, Second Judicial Department reported as Matter of David Andrew C. in 56 A. D.^{2nd} 627; 391 NYS^{2nd} 846

which unanimously affirmed the orders of the Honorable Nathan R. Sobel, then Surrogate of the County of Kings, State of New York dismissing the appellants objections and approving the adoptions.

The opinion of the Surrogate of Kings County, State of New York was not reported.

The opinions of the Court of Appeals, the Supreme Court of the State of New York, Appellate Division of the Second Judicial Department and of the Surrogate of Kings County, State of New York, appear as appendix's A, B and C to the appellant's jurisdictional statement.

The appellant, by notice of motion for reargument directed the attention of the Court of Appeals to Quilloin v. Walcott, (supra) then pending before this court. The motion for reargument, upon the papers submitted, was denied by order dated January 10th, 1978.

Quilloin v. Walcott et vir (supra) was decided by this court on January 10th, 1978.

The appellant sought reargument for a second time, presumably in the belief that the Court of Appeals was not aware of the Quilloin cause or this Court's decision when it denied the appellant's motion to reargue, on January 10th, 1978.

The appellant's second motion to reargue was denied by order dated February 14th, 1978.

Appellants Appendix's E/F

JURISDICTION

Appellant invokes the jurisdiction of the Court pursuant to 28 U.S.C. Section 1257 (2).

STATUTE INVOLVED

Domestic Relations Law of the State of New York, Section 111, subdivision 3 thereof, now by revision effective January 1st, 1977, denominated subparagraph (c) thereof.

THE QUESTION

The appellant proposes the question:

Whether Section 111, subdivision 3 (now subdivision c) of the Domestic Relations Law of the State of New York as passed upon by the Courts of the State of New York is contrary to the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States.

STATEMENT OF FACT

The record on appeal to the Supreme Court of the State of New York, Appellate Division, Second Judicial Department and the Court of Appeals of the State of New York from the opinion and the order(s) of the Surrogate of Kings County which dismissed the appellant's objections after hearing on the evidence and, in the best interests of the child(ren), allowed Kazim Mohammed to adopt David Andrew and Denise established that:

Maria Mohammed was eighteen years old when in 1968, she entered an out-of-wedlock relationship with Abdiel Caban, then matured at thirty-one years of age, married but separated from his lawful wife for more than eight years, the father of two children, now on information and belief, twenty-two and 18 years old.

Maria Mohammed gave birth to David Andrew on July 16th, 1969 and Denise on March 12th, 1971.

The appellant did not offer nor did he pay the costs and expenses attendant to either birth. He did not formally acknowledge that he was the father of either child; there is no Family Court or other order of filiation.

The mother, for birth certificate purposes, named him the father of David Andrew; only after some months and at the insistence of Maria Mohammed did the appellant allow himself to be named Denise's father.

Throughout their liason, and except for three months after Denise's birth, Mrs. Mohammed was fully employed, paid all household expenses, purchased all clothing and equipment necessary to the children including even the child's crib/bed. After the three months Mrs. Mohammed returned to work; a local family care center without cost to Mr. Caban provided a babysitter so that she could continue employment.

Mr. Caban allowed himself to purchase \$30.00 worth of food a week for the four persons. For six months immediately prior to the time Mrs. Mohammed left him, he purchased no food, made no financial contribution; he drank "too much";

he beat Mrs. Mohammed; he called her names (bitch/fuck); he "borrowed" money from Mrs. Mohammed never to return it; throughout this relationship, although she asked, he never gave her any money.

Maria Mohammed testified that she felt trapped; she had nowhere to go until she met Kazim Mohammed who was made aware of her relationship with Caban and her two children. She and the children lived with Mohammed as of December, 1973.

The Mohammed's married on January 30th, 1974 and from such marriage a third child, Stephan Kazim Mohammed, was born to them on December 17th, 1975. For fear of Abdiel Caban, she kept her marriage secret.

Mr. Caban admitted that in June or July or "late in 1974", Mrs. Mohammed advised him that the children David Andrew and Denise were with her mother in Puerto Rico. He did not protest their absence; he did not demand their return; he never wrote to the maternal grandmother or inquire of her as to the children; he made no efforts to ensure such rights to the children as he protested before the nisi prius court or on appeal; he did not send any money for their benefit.

Sometime in September or October of 1975, the appellant stated, he consulted local counsel. He then journeyed to Puerto Rico.

In November of 1975 Mr. Caban forcibly, under guise of concern and/or by trick and device snatched the children from their Puerto Rican home with the maternal grandmother, kept them secreted from Maria Mohammed and even resisted

police inquiries and efforts until January 16th, 1976 when their mother appealed to and a Family Court returned them to her.

Except for the time of his wilful act Maria Mohammed had full custody, financially provided for and assured the children's health and welfare.

Not before the Family Court of the City of New York, the Surrogates Court of Kings County or on appeal to the courts of the State of New York did Mr. Caban denounce the mother as unfit for custody of her children. Nor does he now do so.

The nisi prius Court found Caban's accusation that Maria Mohammed abandoned her children by permitting them to accompany their maternal grandmother to Puerto Rico groundless, without a scintilla of evidence. And, as to the appellant's expressed concern for the welfare of the children whereby he removed them from their lawful custody, the original Court not only found Mr. Caban's testimony belied, it challenged Mr. Caban's motives as harassment.

Appellants Appendix (c)

It is to be noted that throughout his relationship with Maria Mohammed Mr. Caban remained married to another woman whom he, by his testimony, had left or abandoned, certainly from whom he had been separated for more than eight (8) years.

Neither the birth of the child David Andrew or Denise inspired him to seek divorce and marry the mother

of the children. Caban did not, on hearing, pretend that he wished to do so. He neither purchased engagement or wedding ring; he did not pay the costs of maternity confinement, he left such expenses for Maria to provide.

Only after Maria Mohammed left him for the security of a lawful marriage and a stabilized family unit and then very quickly, in June of 1974 Mr. Caban divorced his first wife. In the course of proceedings he married his current wife, Nina on December 16th, 1975.

Nina Caban had never seen the children until Abdiel Caban, not then her husband, absconded with them from Puerto Rico without official or judicial sanction and produced them for her considered care on November 15th, 1975. She joined Mr. Caban in petition against the appellee and she, as well as her husband, was fully heard by the fact-finding court.

It is to be noted that although the appellant, by his admissions made on the hearing when he was ably assisted by able counsel, was aware that the children were sojourning with their maternal grandmother in Puerto Rico since July, or late in 1974 he did not inquire as to their welfare, health or needs, financial or otherwise; he forwarded no monies for their aid; he neither protested their absence or demanded their return for fourteen=months or more; that in Puerto Rico he did not consult an attorney; appeal to the police; appeal to the Family Court of Puerto Rico for custody of the children or towards a neglect petition; he did not protest to the maternal grandmother; he, by self-appointed authority and singular act, decided that it would be in their best interests to bring them back to New York (and) he did so.

If it were necessary or lawfully essential for the Surrogate to find Mr. Caban to be unfit for custody of the children or to find that he had disclaimed them for fourteen months and abandoned the children, the record of hearing would amply support the finding.

THE ARGUMENT

The appellant resisted the opinion of the Kings County Surrogate dated August 3rd, 1976 whereby his objections as the putative father to the adoptions of the children were dismissed as belied on the evidence and the order(s) dated September 10th, 1976 whereby the appellees were allowed adoption in the childrens best interests; he proposed to the Supreme Court of the State of New York, Appellate Division, Second Judicial Department that, "the orders appealed from were contrary to law and violative of the appellant's constitutional rights."

The appellees submitted that in light of Matter of Malpica - Orsini, 36 NY2nd 568, decided by the Court of Appeals on May 8th, 1975, App. dsmd. sub. nom. Orsini v. Blasi, 423 U.S. 1042; 96 S. Ct. 765, the question before the court was "whether the facts in the proceedings at Bar are distinguishable from those set forth in the Matter of Malpica - Orsini?"

Matter of Sean B. W
86 Misc 2nd 217

The appellant resists the Court of Appeals finding that his cause lacked constitutional substantiality, he then and now, unilaterally, rules out Malpica - Orsini declaring, although without reference to all the facts that the "Orsini"

record included a stipulation in lieu of a testimonial transcript and did not include a subsisting relationship beyond that Orsini was adjudicated to be the father of the child, Heather; that he had never lived with the child; had or sought custody or that he ever took care of the child.

In fact Hector Orsini averred to the Family Court of Westchester County that he resided with the child and its mother until two years after its birth; that the mother, in the course of a paternity proceeding, declared him to be the child's father; that he had never denied paternity or attempted to minimize his responsibilities and obligations toward the child; that, with his acknowledgment and consent an order of filiation had been duly entered; that he had purchased and given the child's mother an engagement and wedding ring which the latter still had; that he had proposed marriage to the mother of his child; that he paid all of Heather's expenses including doctor bills, medical bills and all other expenses inherent in properly raising a healthy baby; that he paid the rent and gave the mother 80% of his net take-home pay so that Heather, the child could be well-cared for.

Hector Orsini prayed that his objectives to the adoption of his child by a "stranger" be given the same force and effect as would the objections of any other father and - - the petition for adoption be dismissed.

Affidavit of Hector Orsini
Dated: July/1973
App. Brief - Vol. 12055 Case 3
Supreme Court Library of
Brooklyn

The appellant nevertheless contends that there is a difference between the Matter of Malpica - Orsini and his cause at Bar which renders the unanimous opinions the New York State Courts constitutionally infirm; that the difference lies in the "sketchiness of the father's relationship to his child in "Malpica - Orsini" and the strongly knit ties between father and children here".

Appellant's Jurisdictional
Statement at p. 16

Mr. Caban finds, he believes, irrefutable substance in the fact that the facts, stipulated and therefore accepted as if fully heard by the court, fleshed out "no real bonds at all between Hector Orsini and the child, Heather."

The stipulation between the Malpica - Orsini parties was made, research discloses before the Honorable Vincent Gurahiam, FCJ; Westchester County, New York on December 18th, 1973 and among other provided, as Mr. Caban similarly contends that:

- 5) Mr. Orsini opposes the adoption of his child by her (Corinne Cabert. Blasi) husband; and has never signed any consent to such adoption;
- 6) The objectant, Hector Orsini, has not consented to the adoption nor has he abandoned the child nor waved any substantive rights he may have pursuant to Statute;
- 7) It is stipulated and agreed that if the parties were called to testify that the court

would have sufficient facts before it, other than abandonment or other waiver of rights by Mr. Orsini, to exercise its discretion to deny his objections and approve the adoption on the grounds that the overall best interests of the child would warrant it;

8) There are no factual grounds to justify a finding that Mr. Orsini abandoned or neglected his child;

Record on Appeal
Malpica - Orsini
(Supra)
Appellee's Appendix A

Abdiel Caban did not fare as well before the hearing court nor did the record on appeal demonstrate such commitment to the children David Andrew and Denise as would allow the New York State Courts, nisi prius or Appellate, to except his cause from the principle enumerated by Malpica - Orsini (supra) or this court to allow review.

Nevertheless, the appellant urges review of his record on the ground that "it is apparent that the father there (Hector Orsini) did not have at stake such a substantial interest as to warrant this Court's jurisdiction to review the constitutionality of the statute. Thus, Section 111 was not ripe for review in that case. It is now."

Appellant's Jurisdictional
Statement at p. 17

The appellant concludes, it appears, that upon the facts at Bar as he translates such, Section 111 (3)

of the Domestic Relations Law was improperly applied and, if not as to other putative fathers certainly unconstitutional as to his best interests under the authority of *Quilloin v. Walcott*, (98 S. Ct. 549; 54 L. Ed. 2nd 511, decided January 10th, 1978.)

The appellant, (as did Quilloin) insisted before the New York State County, original and appellate that he was entitled as a matter of due process and equal protection to an absolute veto unless he was formally adjudicated as unfit for parenthood.

The appellant does not (as Quilloin did not) protest the hearing which was afforded him on March 19th, March 20th and April 30th, 1976. He had the right to present affirmative evidence that the adoptions were not in the children's best interests; he was allowed the right to offer other alternatives including, as he did, his right to adopt them; he did not challenge nor offer any evidence that Maria Mohammed, their mother was unfit for custody; he neither alleged nor offered evidence that Kazim Mohammed was ill-suited or unfit as an adoptive father; he was well-represented by counsel; his proofs and contentions, including his insistences that he had the absolute right of veto absent proof of his unfitness to continue as a putative father were accorded respectful consideration.

The adoptions were allowed, in the children's best interests, after Abdiel Caban and his witnesses, including his new wife, Nina, were fully heard.

Quilloin protested the laws of Georgia (Ga. Code Ann. Section 74-403 (3) (1973) which required only the consent of the mother of an illegitimate child for adoption; and Caban protests the constitutional viability of an identical statute on the authority of Stanley v. Illinois (405 U.S. 645 (1972) in which matter Stanley was protected against the arbitrary act of the State of Illinois not against the fit, functional surviving mother of the children.

The Court held:

"Stanley left unresolved the degree of protection a State must afford to the rights of an unwed father in a situation, such as that presented here, in which the counter-vailing interests are more substantial".

"Thus, (Mr. Justice Marshall, for a unanimous court, said) the underlying issue is whether, in the circumstances of this case and in light of the authority granted by Georgia (and New York) law to married fathers, appellants interests were adequately protected by a "best interests of the child" standard."

Quilloin v. Walcott
Supra - pages 2 and 8

In neither case, Quilloin or Caban at Bar was the mother of an illegitimate child seeking a normal home, name and full family relationship for her child and therefore, consenting to its adoption by her lawful husband, required to obtain the consent of the putative father or alternatively prove that the putative father was unfit or had abandoned the child/children for in such case, Mr. Justice Cooke, of the Court of Appeals (Matter of Malpica-

Orsini - supra) said:

"- - the chances that such a child will have the equal rights and benefits of a name will be unmeasurably diminished and the likelihood that he or she will be a pawn for the avaricious and embittered will be greatly enhanced."

Similarly, ~~this~~ court found that the majority of the Georgia Court relied on a permissible strong State policy of rearing children in a family setting, "policy which in the court's view might be thwarted if unwed fathers were required to consent to adoptions" and therefore that the appellants interests are readily distinguishable from those of a divorced fathers'; that the State could permissively give a putative father less veto authority than it provides to a married father and finally, that the State of Georgia was not required, in that situation, to find anything more than that the adoption was in the best interests of the child; that by use of such standard, the child's welfare, the appellant (Quilloin) was not deprived of his substantive rights under the Due Process and Equal Protection Clauses of the Constitution.

Quilloin v. Walcott
Supra

The appellant now contends that he is to be protected under the dicta of the case that is:

"we have little doubt that the Due Process Clause would be offended "(i)f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interests." Smith v. Organization of Foster Families for Equality and Reform - - U.S. - - (1977) (Stewart, J. concurring).

"But this is not a case in which the unwed father at any time had, or sought, actual or legal custody of his child nor is this a case in which the proposed adoption would place the child with a new set of parents with whom the child has never lived. Rather, the result of the adoption is to give full recognition to a family unit already in existence, a result desired by all concerned except appellant."

Quilloin v. Walcott
Supra at p. 9.

Malpica - Orsini
36 NY2nd 568, App. dismd
423 U.S. 1042

CONCLUSION

The appellees urge, therefore, that the facts in the proceedings at Bar are not distinguishable from those set forth in Quilloin v. Walcott, (supra); that the appellants substantive rights were not violated by the application of the "best interests of the child" standard; that the appellant was not deprived of his rights under the Due Process and Equal Protection Clauses of the Constitution of the United States.

Dated: April 15th, 1978

Respectfully submitted,
Morris Schulslager
Morris Schulslager
Counsel for Appellees
Office and P.O. Address
16 Court Street
Brooklyn, New York 11241

FAMILY COURT COUNTY OF WESTCHESTER

-----X

In the Matter of the adoption of :
HEATHER ALISON MALPICA-ORSINI, a :
minor under the age of 14 years, :
by CHARLES BLASI, :

HECTOR ORSINI, :
Petitioner, :

-against- :

CHARLES BLASI, :
Respondent :

-----X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HECTOR ORSINI, being duly sworn, deposes and says:

I am the father of Heather Alison Malpica-Orsini (hereafter "Heather") and submit this affidavit in support of my application to oppose the adoption of my daughter, permitting me to visit my daughter in accordance with the prior order of the Family Court, New York County, and for other relief.

Heather was born on November 16, 1970 at Misericordia Hospital, Bronx, New York. Her name is registered as "Heather Alison Malpica-Orsini" on the birth certificate which states that I am the baby's father.

There is no question as to my being Heather's father. Heather's mother, then known as Corrine Caberti, and I met during February, 1969 and continuously resided together until two years after Heather's birth. Moreover, in her petition commencing a paternity action, sworn to on July 25, 1972, she stated that I was Heather's father. At no time nor in any way have I ever denied paternity, nor did I in any way attempt to deny or minimize my responsibilities and obligations towards

my daughter. I stated that I am Heather's father in open court before Hon. Nanette Dembitz, in the Family Court, New York County, on September 8, 1972. An Order of Filiation and Support was then duly signed and filed, adjudging me to be Heather's father.

I at all times strictly complied with the directions of the Order until further compliance was made impossible due to the actions of Heather's mother in January, 1973, as will be more fully set forth.

Early in 1970, when we realized that we were going to have a child, I proposed that we marry. I gave Corrine a wedding ring and an engagement ring, which she still has. She refused to marry me because she did not like the way I had proposed. I proposed again. However, she made it clear to me that as far as she was concerned the question of our marrying was closed. I sought to change her mind, not only for my sake but for the sake of our unborn child, but she was adamant and persistent in her refusal.

On November 16, 1970, Heather was born. For a period of about two years, until June 1972, when Heather's mother forced me from my apartment, I continuously resided with my daughter. During this time my daughter and I developed the mutual love and affection that only a parent can establish with his child and a child with her parent. I paid for all Heather's expenses, including doctors' bills, medical bills and all the myriad expenses inherent in properly raising a healthy baby. During these two years, Heather, her mother and I existed as a family unit. I raised and cared for Heather at least as well as any other man would care for his child. I believe that Heather's physical and psychological development during this critical period was exemplary.

Since June of 1972, I was compelled to obtain new shelter which put a tremendous strain on my resources. Nevertheless, out of concern for my daughter's welfare, I continued to pay the rent on the apartment. I wanted Heather to be able to remain in the physical surroundings she had grown accustomed to, in an effort to minimize the shock and impact upon her of my sudden absence.

Shortly thereafter, on August 10, 1972, Heather's mother instituted a paternity suit in Family Court, New York County, in which she alleged that I was Heather's father. I appeared in that proceeding and admitted my paternity, as I have already stated. An Order of Filiation and Support was signed by Judge Nanette Dembitz on September 3, 1972, to which I have already referred, ordering me to pay child support of \$150 per month commencing October 1, 1972, and granting me visitation rights every Sunday.

I did not consider my contributions for my daughter's support and well-being limited by this order. In fact, I sent Heather's mother close to 30% of my net take-home pay to insure that she would have sufficient funds to adequately take care of herself so that she wouldn't have to cut corners on Heather's needs.

I had attempted to visit my daughter every Sunday, but since I was working full-time as a Special Investigator for the New York City Department of Health and attending school at St. Johns University for an M.B.A. degree, I was unable to see her every Sunday. However, I estimate that until my daughter was hidden from me in January, 1973, I was able to see her on the average of every other Sunday. When I did see her, I felt that we both had as meaningful few hours together as possible with an infant of her age. There is nothing so satisfying to a parent and so reassuring to me as the unbridled

joy that lit up her eyes every time she spread her arms and ran towards me. It is important for my child to be together with her father, even if it is only once a week. A surrogate father or a father image is insufficient. A child can have one or more of both, yet can always recognize, especially at this age, the love that only a father can bestow. I am extremely apprehensive of the psychological trauma that will result when a child, at such a tender and yet comprehending age, is denied access to her father whom she has known and loved for practically her entire life. Heather knows me and recognizes me as her father. Her health and welfare require that I continue to give her the love and support that only a father is capable.

I had made several appointments for Corrine and me to meet with a family counselor at Columbia University during September, 1972 through February, 1973. Of the approximately six appointments that we had made, Corrine appeared but once. I endured this emotional turmoil because I was concerned about my daughter's health and welfare. I know Corrine. I lived with her for over three years and I am honestly concerned about the type of upbringing and influence, moral and otherwise, that she will impose upon my daughter. I am also concerned about Heather's emotional reaction to her new and strange environment and the quality of the care and attention she will receive in a house with a strange man.

In early January, 1973, Heather's mother unilaterally abrogated the order of September 8 by returning my support checks, moving to a new address and refusing to allow me to see my daughter. She told me that she would no longer allow me to ruin her Sundays. This was so noted by Judge Dembitz in her endorsement to my petition, which states that "respondent returned support payment and refused visitation."

I attempted to resolve this matter between myself and her, but to no avail. I was compelled, therefore, on March 30, 1973 to move in Family Court, New York County, for an order enforcing my visitation rights. During this time, I was extremely apprehensive and concerned for the safety and well-being of my daughter. She was very accustomed to my constant attention, but suddenly she, due to her mother's efforts, saw me only infrequently. And now, to further confuse and upset her, she was moved to a strange residence where a strange man, not her father, resided.

A hearing was held on my motion before Judge Dembitz on April 12, 1973, at which time Heather's mother alleged that she had married Mr. Blasi and that Mr. Blasi wanted to adopt my daughter. I was shocked and dismayed that she would marry a virtual stranger in an attempt to prevent me from seeing my daughter. Corrine is a very demanding person and is accustomed to getting her way, regardless of whether she is right or wrong. Nothing infuriates her more than one not adhering to her every whim. I can only surmise, therefore, that Mr. Blasi either is unaware of her character and habits or is willing to be subservient, dominated and controlled by her. I am convinced, therefore, that this adoption petition was not filed as a result of any true love and affection between Mr. Blasi and my daughter, but rather as a concession to Heather's mother's demands.

Judge Dembitz declined to issue an order enforcing my visitation rights at that time due to the allegation that Mr. Blasi wished to adopt my daughter from me, and stated that my status and role should be considered in the adoption proceedings.

I respectfully submit to this court that my status as Heather's father, my long established concern for my daughter's future health, care and welfare entitle me to be heard in any deliberations concerning her future. As such, I do have standing in this matter and must receive notice and an opportunity

to be heard at any and all proceedings that are to take place. I should further be entitled to object to the adoption and have my objection given the same weight and validity accorded to that of any other father.

I raised and cared for my daughter since she was born. I lived with my daughter from the moment she was born until the time she was wrongfully concealed from me, a period of almost two years, during which time I devoted much time and attention to her health, welfare and upbringing. There is no question that my daughter flourished in my home and in my care. My love for Heather and my concern for her continued health and welfare is of paramount importance to me. I have always been and still am fully prepared to accept my obligations as a father and respectfully submit that I have every right to continue to be responsible for her. My rights and obligations as father of my child should not and cannot be arbitrarily abrogated without my consent and without a showing that her continued association with me would be detrimental to her. I do not wish to terminate or limit my obligations as father. I do not consent to the adoption of my daughter. Mr. Blasi cannot be given rights superior to mine in the health, care and upbringing of my daughter in the face of my objections.

My rights as Heather's father should be no more and no less than those accorded to any other father. A child cannot be adopted without the consent of its parents. My child cannot be adopted without my consent.

I realize that the primary interest of this court is the health and welfare of my child. This is my concern as well. I submit that my daughter is entitled to no better nor worse treatment than any other child in similar circumstances. If Heather's mother and I had married, as I wanted, and separated immediately after her birth, my daughter could not be

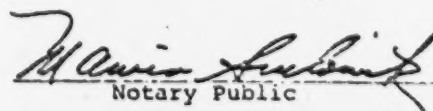
adopted without my consent. Am I to be relegated to the status of a nonexistent father, is my paternity to be denied, my rights and obligations as father extinguished, my concern for my daughter's health and welfare overlooked, my knowledge of my daughter's physical and mental needs to be ignored, and my ability and my capability as a proper father deemed irrelevant simply because a marriage certificate had not been filed? Is Heather to be denied the benefit of my concern for her, my knowledge of her needs, and a father's love merely because a marriage certificate had not been filed?

WHEREFORE, I respectfully request that an order be entered:

- (1) Enforcing my rights of visitation as set forth in the Order of Filiation made in the Family Court, New York County, on September 8, 1972;
- (2) Granting me notice and an opportunity to be heard at all proceedings concerning my daughter;
- (3) Giving my objections to the adoption of my daughter the same force and effect that would be given to the objection of any other father;
- (4) Dismissing the petition for adoption, and
- (5) For such other and further relief as to this court may seem just and equitable.


HECTOR ORSINI

Sworn to before me this
2nd day of July, 1973.


Notary Public
MARVIN SRULOWITZ
NOTARY PUBLIC, State of New York
No. 31-4500915
Qualified in New York County
Commission Expires March 30, 1975

stipulation on the record?

MR. SRULOWITZ: I will, your

Honor.

It is hereby stipulated and agreed between the parties that;

- (1) Corrine Caberti Blasi is the mother of Heather Alison Malpica-Orsini;
- (2) That Mr. Orsini is the adjudicated putative father of Heather Alison;
- (3) Mr. Charles Blasi is the proposed adoptive parent and is the lawful husband of the mother of the child;
- (4) The mother consents to the adoption of her child by her husband;
- (5) Mr. Orsini opposes the adoption of his child and has never signed any consent to such adoption;
- (6) The objectant, Hector Orsini, has not consented to the adoption nor has he abandoned the child nor waived any other substantive rights he may have pursuant to statute;
- (7) It is stipulated and agreed if the parties were called to testify that the Court would have sufficient facts before it, other than abandonment or other waiver of rights by Mr. Orsini, to exercise

its desecration to deny his objections and approve the adoption on the grounds that the overall best interest of the child would warrant it;

(8) There are no factual grounds to justify a finding that Mr. Orsini abandoned or neglected his child;

(9) If Mr. Orsini's standing to object to the adoption of his child under Domestic Relations Law Section 111, Paragraph 3 is to be treated in the same way as the father in wadlock his objections would be upheld and the adoption disapproved.

Next is the two legal questions, your Honor.

THE COURT: Gentleman, before you got to that, I had suggested for various reasons to go into that and I think we should point out that both parties are cognizant of the fact, regardless of the outcome of this case, no purpose would be served by taking testimony that could some day prove to be of embarrassment either to the parties or to the child and I think that it is in that spirit both of you have agreed to dispense with taking further testimony recognizing, as I said before, that we are really dealing with two legal questions and not factual questions.

Now, I think you wish to state on the record

the legal questions that you anticipate will be submitted to an appellate court based on those proceedings, is that correct.

MR. LOWENTHAL: May I also ask, for the record, that the testimony taken here not be involved in this proceeding?

THE COURT: Yes. You are not going to type up the transcript of the testimony because it is irrelevant.

It will be on an agreed statement of facts.

MR. SRULOWITZ: Now, the next questions.

(1) Is an adjudicated putative father entitled to notice and an opportunity to be heard upon his objections to the adoption of his child;

(2) Is the objection to an adoption, raised by an adjudicated putative father, who has not consented to the adoption nor abandoned his child, sufficient grounds to deny the adoption to the same extent as it would be if he were the in wedlock father.

THE COURT: Those are your two issues because I think it is agreed, although there are various grounds in the statute for overruling the objection of an in wedlock father to an adoption